


Government of the District of Columbia
Department of Insurance, Securities and Banking



William P. White
Commissioner

BULLETIN
11-SB-03-07/21

**TO: INVESTMENT ADVISERS THAT TRANSACT BUSINESS
IN THE DISTRICT OF COLUMBIA**

FROM: WILLIAM P. WHITE, COMMISSIONER 

SUBJECT: IMPLICATIONS OF DODD FRANK ACT AND SEC RULES

DATE: July 21, 2011

This Bulletin provides guidance for investment advisers (“advisers”) with less than \$150 million in assets under management that conduct business in the District of Columbia, who may be required to register with the Department of Insurance, Securities and Banking (“Department”). Specifically, those advisers with between \$25 million and \$100 million in assets under management, “exempt reporting advisers,” i.e. advisers to venture capital funds and private funds with less than \$150 million in assets under management, and pension consultants **with less than \$200 million in assets under management**.

Effective July 21, 2011, the Wall Street Regulatory Reform and Consumer Protection Act (“Dodd Frank Act”), will raise the threshold for registration with the Securities and Exchange Commission (“SEC”) for investment advisers to \$100 million in assets under management in the United States. After July 21, 2011, all investment advisers doing business in the District of Columbia, with less than \$100 million in assets under management, that are not presently registered with the SEC, must register with the Department.

The Dodd-Frank Act eliminated the private adviser exemption contained in Section 203(b)(3) of the Investment Advisers Act of 1940 (“Advisers Act”). SEC Rule 203-1 allows investment advisers to private funds with more than \$150 million in assets under management in the United States that previously relied on the private adviser exemption to delay registration with the SEC until March 30, 2012. The Dodd-Frank Act amended Sections 203(l) and (m) of the Advisers Act to exempt from SEC registration advisers to venture capital funds and advisers to private funds with less than \$150 million in assets under management in the United States, if they provide such annual or other reports the SEC deems necessary and in the public interest. SEC Rules 203(l)-1 and 203(m)-1 exempt these advisers from SEC registration and require them to make annual reports to the SEC. The SEC refers to these advisers as “exempt reporting

advisers.” On June 22, 2011, the SEC issued Release No. IA-3221, *Rules Implementing Amendments to the Investment Advisers Act of 1940 (SEC Release)*. The Department will follow the schedule set forth in the SEC Release for advisers to private funds with more than \$150 million in assets under management in the United States. Accordingly, the compliance date for registration of exempt reporting advisers, not otherwise exempt from registration in the District of Columbia, will be March 30, 2012.

In SEC Release No. IA-3221, the SEC also amended Rule 203A-2(b), which provides an exemption from SEC registration for pension plan consultants, by raising the threshold on the value of plan assets advised by pension consultants relying on the exemption from \$50 million to \$200 million. As a result of this amendment, “advisers currently relying on the pension consultant exemption advising plan assets of less than \$200 million” must withdraw from SEC registration within 180 days of the adviser’s fiscal year end. Such advisers “may be required to register with one or more states.”

The SEC Release provides a schedule for advisers with under \$100 million in assets under management to switch to state registration. The schedule provides that investment advisers registered with the SEC prior to July 21, 2011 will remain registered with the SEC until January 1, 2012. Between January 1, 2012 and March 30, 2012, these advisers must file an amendment to their Form ADV to indicate that they will be switching to state registration. Between March 30, 2012 and June 28, 2012, investment advisers who will be ineligible for SEC registration must file a Form ADV-W with the SEC. Advisers doing business in the District of Columbia **with under \$100 million** in assets under management must be licensed with the Department on or before June 28, 2012, in order to conduct business in the District of Columbia after that date.

Implications of Dodd Frank Act and SEC Rules on DC Advisers

- Investment advisers with less than \$100 million in assets under management that are not currently registered with the SEC may not offer investment adviser services in the District after July 21, 2011 unless they are licensed by the Department or are otherwise not subject to the licensing requirements of Section 202, D.C. Official Code § 31-5602.02.
- Investment advisers with less than \$100 million in assets under management that offer investment adviser services in the District and are currently registered with the Securities and Exchange Commission shall follow the implementation schedule set forth in SEC Rule 203A-5, except as provided below. These advisers shall submit an investment adviser license application to the Department between January 1, 2012 and March 30, 2012. Those applications will be processed, but shall remain in pending status until the SEC has accepted the firm’s application for withdrawal on Form ADV-W, at which time they will become effective **upon approval by the Department**.
- Subject to any rule or order that may hereafter be adopted or issued by the Department, the compliance date for registration in the District of exempt reporting advisers under SEC Rules 203(l)-1 or 203(m)-1 that act as investment advisers in the District and are not otherwise exempt from registration is March 30, 2012. Those advisers should submit to

the Department an application for a license between January 1, 2012, and February 28, 2012, to provide sufficient time for their license applications to be reviewed by the Department prior to March 30, 2012.

- Subject to any rule or order that may hereafter be adopted or issued by the Department, the compliance date for registration in the District of Pension Consultants (Advisers to Pension Funds with assets under management of less than \$200 Million (former SEC Rule 203A-2(b)) that are not otherwise exempt from registration in the District is on or before the expiration of 180 days of the adviser's fiscal year end.

A copy of the SEC Final Rules can be obtained by clicking the following link:
<http://sec.gov/rules/final/2011/ia-3221.pdf>. For additional information about this Bulletin, please contact Claire McHenry, claire.mchenry@dc.gov, (202) 442-4810.